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ABSTRACT

Due process hearing decisions (N=116) heard in 1981-82 by the New Jersey Department of Education and in 1982-83 by the Office of Administrative Law in the New Jersey Department of State were compared in terms of four variables: (1) petitioner-respondent, (2) issue(s), (3) representation, and (4) which party prevailed. Chi-square analyses revealed several trends, including that parents are predominantly and increasingly the petitioners, that local education agencies (LEAs) more commonly prevail but the rate remains fairly constant from year to year, that the use of attornies by both parties has greatly increased, and that there was a by-issue difference in who prevailed. LEAs more frequently prevailed in issues related to 12-month programs, residential placement, programing/Individualized Education Programs, and evaluation/reevaluation. Parents more frequently prevailed in placement issue decisions. A reversal was found between the 2 years regarding classification issues, with LEAs prevailing 55% of the time in 1981-82 and parents prevailing 70% of the time in 1982-83. (CL)

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School Psychology and The Law
Analysis of Special Education Hearing Decisions

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Summary of a presentation at the Conference of the National Association of School Psychologists (Philadelphia, PA, April, 1984)

Special Education Due Process Hearings
1981-82 and 1982-83

Background

In July 1982 Judge Dickinson Debevoise of the Fourth Federal District Court determined that it was illegal for the New Jersey State Department of Education (D of E) to employ directly the persons conducting special education due process hearings. The decision was subsequently made to transfer the hearing activity to the Office of Administrative Law (OAL) in the New Jersey Department of State.

There were many hearing requests which had been recorded by the D of E and were in various stages at the time of Judge Debevoise's order. With the agreement of both parties, 20 of these were continued to their completion by the hearing officers of the D of E. In that school year 1982-1983, therefore, about 40% of the hearings were conducted by the D of E and the remaining 60% (N = 31) by administrative law judges of the OAL.

Concerns were raised by various groups about this transfer of the hearings to OAL. Various and conflicting opinions were advanced about the possibility of a shift in the manner in which hearings would be conducted, of the possibility of a preference for procedural or content bases for decisions and of a possible tendency to favor one of the parties. These speculations led to the investigation reported in this paper. Attempts were made to determine the status of several conditions for 1981-1982 and 1982-1983 respectively and to compare the two years. The following questions were pursued:

1. Are local districts or parents more frequently the petitioners?
2. What are the most common issues for which hearings are requested?
3. Under what circumstances does a party prevail at hearing?
    a) Does the petitioner prevail more frequently?
    b) Do parents/LEAs prevail more frequently?
    c) Is there a by-issue difference in who prevails?
    d) Is having an attorney/advocate related to the outcome?
    e) Is the affiliation (OAL/Education) of the hearing officer related to the outcome?

Method

Each hearing decision issued during the two years under consideration was read for the following variables - petitioner-respondent, issue(s), representation and who prevailed.

Chi square analyses were conducted for the following comparisons:

1. who petitioned by who prevailed,
2. who prevailed by the affiliations of the hearing officers, and
3. the use of attorneys/advocates by the outcomes.

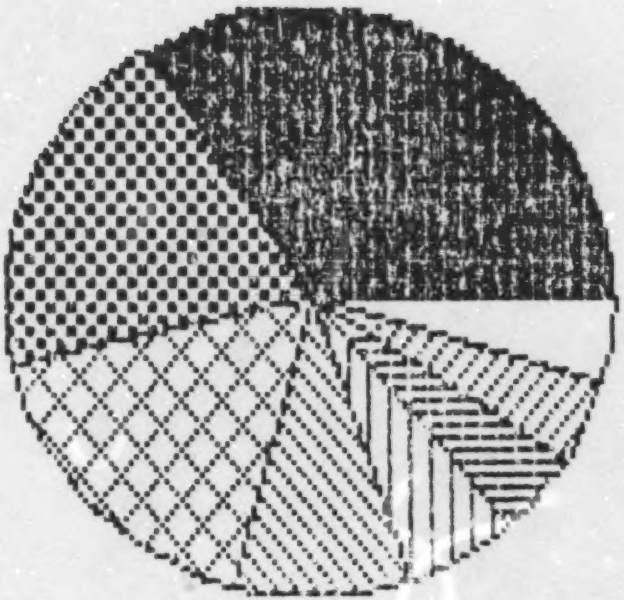
Results

1981-1982

1. 65 cases were heard by the D of E
2. Parents were petitioners in 66% of the cases.
3. a) In 58% of the cases where parents petitioned, parents prevailed.
   b) In 82% of the cases where LEAs petitioned, LEAs prevailed.
   c) Chi square analysis reveals that this is significant at greater than the .01 level.
4. Overall parents prevailed in 45% of the cases heard.
5. In 57% of the cases both parties were represented by an attorney/advocate.
6. a) In 83% of the cases the party that prevailed was represented by an attorney/advocate.
   b) In 35% of the cases the party that lost was not represented by an attorney/advocate.
   c) Chi square analysis reveals that this is significant at greater than the .001 level.
7. The issues that were raised at hearings are depicted on Chart 1. It can be seen that classification and placement, excluding such special issues as residential and 12-month placements, accounted for over half of those heard.

Chart 1

HEARING ISSUES 1981-1982



4.65% TUITION

4.65% PROCEDURAL

4.65% PROGRAM

5.81% 12 MONTH

9.30% EVALUATION

17.44% RESIDENTIAL

19.77% CLASSIFICATION

33.73% PLACEMENT

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1982-1983

1. 51 cases were heard, 20 by D of E hearing officers, 31 by judges of OAL.

2. Parents were petitioners in 74% of the cases.

3. a) In 46% of the cases where parents petitioned, parents prevailed.

   b) In 62% of the cases where LEAs petitioned, LEAs prevailed.

   c) Chi square analysis reveals that this is not significant.

4. a) Comparison of the decisions by D of E and OAL revealed no significant difference between the agencies in who won/lost a case. (Chi square was not significant.)

   b) D of E decisions were divided evenly between parents and LEAs. There was a slight observable (60%) tendency toward LEAs winning when OAL heard the case.

5. Overall parents prevailed in 43% of the cases.

6. In 84% of the cases both parties were represented by an attorney/advocate, a 27% increase from the previous year.

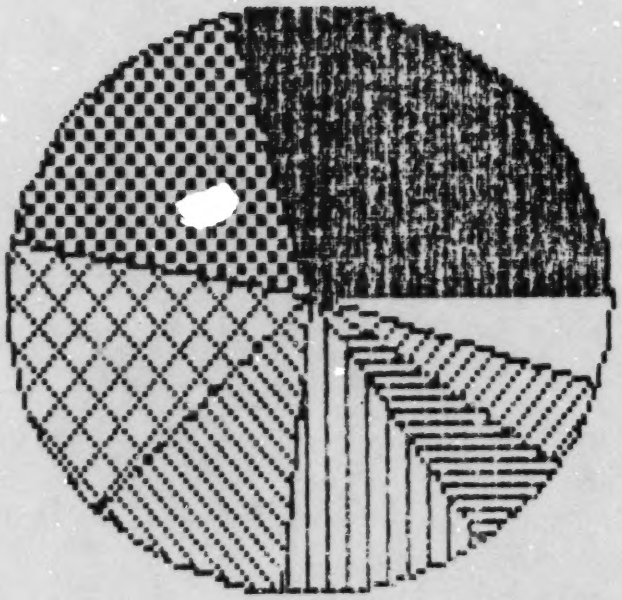
7. a) In 92% of the cases the party that prevailed was represented by an attorney/advocate.

   b) In 10% of the cases the party that lost was not represented by an attorney/advocate.

8. The issues that were raised at hearings are depicted in Chart 2. It can be seen that classification and placement, excluding such special issues as residential and 12-month placements, accounted for just under half of those heard.

Chart 2

HEARING ISSUES 1982-1983



4.82% PROCEDURAL

4.82% PROGRAM

6.02% EVALUATION

10.84% 12 MONTH

10.84% TUITION

15.66% RESIDENTIAL

18.07% CLASSIFICATION

28.93% PLACEMENT

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Two-Year Comparison

1. Parents are predominately and increasingly the petitioners. (66%, 74%).

2. LEAs more commonly prevail but the rate remains fairly constant from year to year. (55%, 57%).

3. The use of attorneys/advocates by at least one party has remained constant, (91%, 90%). The use of attorneys/advocates by both parties has greatly increased (57%, 84%).

4. While the relative importance of issues, as reflected in the numbers of times they are brought to hearing, remains fairly constant, certain trends in frequencies can be seen in Chart 3.

5. There is a by-issue difference in who prevailed.[1]

Issue	Prevailing Party	
12-month program	LEAs	69% of the time
residential	LEAs	64% of the time
programming/IEP	LEAs	63% of the time
evaluation/reevaluation	LEAs	100% of the time
placement	Parents	55% of the time
tuition reimbursement	neither	
classification	*	

*81-82 LEA 55% of the time
82-83 Parents 70% of the time

This shift is unrelated to the affiliation of the hearing officer.

Note 1

With the exception of classification, the data for both years under consideration were consistent with the direction of the total.

Chart 3

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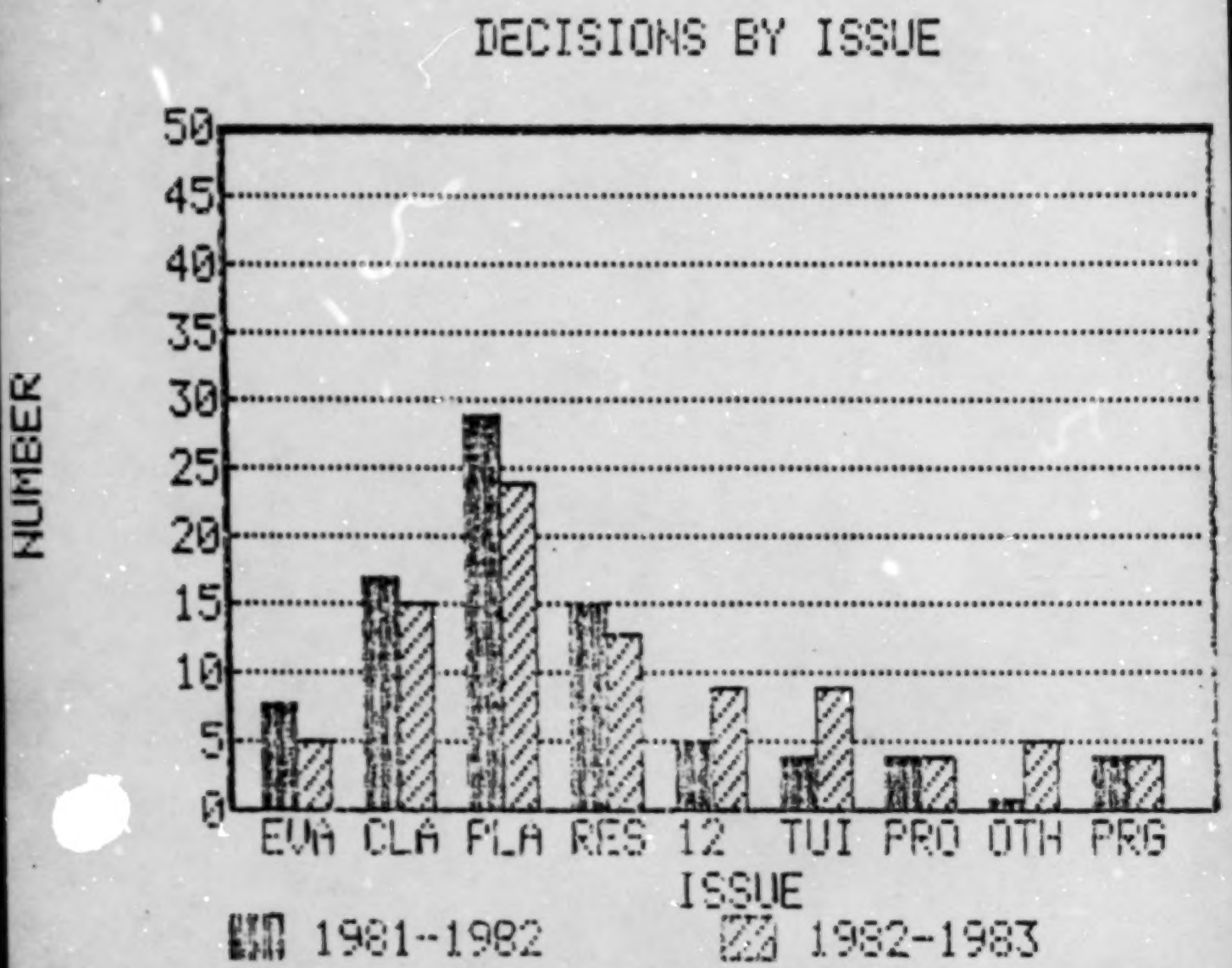

Interpretations and Implications

1. In 1981-1982 a party to a hearing had a significantly better chance of prevailing if represented by an attorney/advocate. In 1982-1983 with both parties represented in most cases, having an attorney or not did not seem to effect who won. The increase in the use of representatives, however, had added legal formality and consequently expense to the process.

2. Although parents are usually the petitioners, when an LEA petitions it is quite likely to prevail. One probability is that the pursuit of a desired outcome is more emotionally loaded for parents and they therefore need a final hearing decision before accepting something they do not prefer. Conversely, the LEAs who are more conservative about committing the required time and money to a hearing, seem more amenable to settling at an earlier level of intervention. It is very important therefore that a vital mediation system be maintained.

3. The absence of any meaningful shift in the nature of the hearing decisions with the transfer of the process to OAL, indicates that there is not a difference in the hearing outcomes related to the affiliation of the hearing officers.

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November 1983

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